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SUBJECT: (U) NICARAGUA: LABOR MONITORING AND ENGAGEMENT WITH FREE TRADE

REF: 09 STATE 129631; 09 MANAGUA 437

¶1. (U) As per Ref. A request, the following is U.S. Embassy Managua's submission regarding Labor Monitoring and Free Trade Agreements.

¶A. Labor Issues Scene Setter:

The Right of Association

¶2. (U) The law provides for the right of all public and private sector workers, with the exception of those in the military and police, to form and join independent unions of their choice. Workers exercise this right in practice. Workers are not required to notify their employer or the Ministry of Labor (MITRAB) of their intention to organize a union. According to the latest figures, the country has a population of 5.7 million people, of which, approximately four million participate in the workforce. MITRAB estimates that 180,000 workers are members of approximately 850 trade unions. The unionized workforce represents approximately 4.5 percent of the total workforce between 15 and 60 years old. In general, labor unions are allied with political parties, and clash with each other along party lines.

¶3. (U) The constitution recognizes the right to strike, and the law allows unions to conduct their activities without government interference. However, burdensome and lengthy labor code conciliation procedures impede workers' ability to call strikes. During a strike, employers cannot hire replacement workers. If a strike continues for 30 days without resolution, MITRAB has authority to suspend the strike and submit the matter for arbitration. MITRAB often declares strikes illegal, even when workers follow legal strike procedures. The reality for workers in the private sector is that to prevent strikes employers terminate or otherwise separate from service those workers who they identify

as potential activists or strong organizers. The prevalence of employer-controlled unions in workplaces that also have more traditional unions also impacts the practical ability of private sector workers and unions to strike.

The Right to Organize and Bargain Collectively

14. (U) The law provides for the right to collective bargaining. A collective bargaining agreement cannot exceed two years and is automatically renewed if neither party requests its revision. The government protected these rights and often sought to foster resolution of labor conflicts through informal negotiations rather than formal administrative or judicial processes. Companies in disputes with their employees must negotiate with the employees' union, if one exists. By law, several unions may coexist at any one enterprise. The law permits management to sign collective bargaining agreements with each union operating at an enterprise.

15. (U) The penal code establishes sanctions against employers who violate labor rights, such as interfering with the formation of unions or strikebreaking. In practice, many employers in the formal sector continued to violate worker rights by blacklisting or firing union members. Employers also avoid legal penalties by organizing "white unions" (employer-led unions), which lack independence. Union leaders assert that employers and union leaders who support the Ortega administration often pressure workers affiliated with non-FSLN unions to resign and register with FSLN unions.

16. (U) Although employers must reinstate workers fired for union activity, MITRAB cannot legally order employers to rehire fired workers. Formal reinstatement requires a judge's order. The law allows employers to obtain permission from MITRAB to dismiss any employee, including union organizers, provided the employer agrees to pay double the usual severance pay. In practice, employers often do not reinstate workers due to weak enforcement of the law.

17. (U) Labor leaders complain that employers routinely violated collective bargaining agreements and labor laws. Through the first six months of 2009 (the latest statistics available) MITRAB conducted 3,959 inspections and issued 26 fines, including some to companies that operate in Free Trade Zones (FTZ).

18. (U) There are no special laws or exemptions from regular labor laws in the 41 FTZs. Less than 10 percent of the estimated 55,000 FTZ workers are union members. Because a high proportion of FTZ unions have fewer than 50 members, many lack effective collective bargaining power (Ref. B). This is primarily due to the effects of labor law reform in 1996, when the threshold for union formation was modified from 50 percent of a workforce to only 20 workers. While this has led to the creation of more unions, these unions are often weak, divided, and easy to break apart by employers. Though the law establishes a labor court arbitration process, long delays and lengthy, complicated procedures have a detrimental effect on labor resolutions mediated by the courts. As a result, most labor disputes are reconciled outside of court. The International Labor Organization (ILO) has been working with the government and labor leaders in an effort to reform this process and make it more accessible to those who have disputes with their employers.

19. (U) Labor unions have continued to complain that companies which operate in the FTZs attempt to block unionization efforts by any means necessary, including by closing down operations. Also, they allege that when the companies close, many avoid making the payments as required by law. Despite the fact that the majority of

worker complaints reported to MITRAB involve companies which operate in the FTZs, the government has been slow to take substantial action in reforming labor practices in these areas. However, the FTZs often represent more worker complaints and government inspections because the sector is easier to monitor than the larger informal or agricultural sectors. In addition, the majority of workers' unions operate in the free trade zones, and therefore more complaints are registered against FTZ companies.

Prohibition of Forced or Compulsory Labor

¶10. (U) The law prohibits forced or compulsory labor, including by children; however, labor advocates report that such practices occur. The law does not prohibit the trafficking of persons for forced labor. The government does not have the resources to effectively enforce the law or implement programs to combat forced labor. There are instances of forced domestic servitude, primarily of female minors, and of forced prostitution by minors who are trafficked to urban centers from other countries or from rural areas within the country.

Prohibition of Child Labor and Minimum Age for Employment

¶11. (U) Although the law provides for the protection of children's rights and prohibits any type of economic or social exploitation of children, child labor is a widespread problem (Ref. C). The government does not effectively enforce the law to protect children from workplace exploitation. The 2005 National Survey of Adolescent and Child Labor, the most recent available, estimated that there were approximately 239,000 working children between 5 and 17 years old, of whom 36 percent were less than 14 years old. The NGO Save the Children has noted that, although school enrollment increased from 2007-2008, it fell in 2009 due to the economic situation as well as budget cuts in education and health. Lower enrollment rates typically correlate with a higher incidence of child labor.

¶12. (U) The law establishes the minimum age for employment at 14 years and limits the workday to six hours and the workweek to 30 hours. Children between 14 and 16 years of age must have parental approval to work. The law prohibits teenage domestic workers from sleeping in the house of their employers. MITRAB is legally responsible for caring for those teenage domestic workers unable to return each evening to their families, though the law is not generally enforced. It is also illegal for minors to work in places identified by MITRAB to be harmful to their health or safety such as mines, garbage dumps, and night entertainment venues. However, children as young as 14 are allowed to work as prostitutes. Nicaragua does have laws against trafficking in persons, including minors.

¶13. (U) All employees more than 14 years old must be enrolled in the Nicaraguan Social Security Institute (INSS). The law also provides for eight-year prison terms and substantial fines for persons employing children in dangerous work and permits inspectors to close facilities employing child labor. The government does not provide adequate resources for MITRAB to effectively enforce the law except in the small formal sector. Though the annual budget for MITRAB was cut in 2009, the percentage of the budget allocated to enforcement increased by 10 percent, from approximately 18 million cordobas (\$874,000) to 21 million cordobas (\$1 million).

¶14. (U) Most child labor occurs in the large informal sector, including on coffee plantations and subsistence farms, and in forestry, fishing, and hunting. According to the ILO's

International Program on the Elimination of Child Labor, children engage in the worst forms of child labor in plantation agriculture, shellfish harvesting, pumice and limestone quarrying, artisanal gold mining, industrial manufacturing, construction, commercial/retail, hospitality, and housekeeping. Employers also use child laborers to cross major land borders with drugs and other contraband.

¶15. (U) Children working in agriculture suffer from exposure to the sun, extreme temperatures, humidity, and dangerous pesticides and other chemicals. Hundreds of children working with their families face exposure to sun, extreme temperatures, water pollution, and powerful ocean tides in harvesting black clams for ceviche.

¶16. (U) In 2008, the government inaugurated Programa Amor (love), a social welfare program headed by first lady Rosario Murillo with a stated goal of eradicating the worst forms of child labor. While there is some evidence that the program was operative in early 2009, quantitative information regarding its effectiveness has been largely absent due to lack of accessibility. The government continues activities to incorporate working adolescents into the formal workforce by transferring children from the worst forms of child labor into non-dangerous activities. NGOs offer vocational training to help adolescents develop job skills for FTZ factory employment. Through its inspections network, MITRAB removed 51 child workers from employment and incorporated 783 adolescents into the formal sector during the first six months of 2009.

The Elimination of Discrimination in Respect of Employment and Occupation

¶17. (U) An ongoing area of employment discrimination in Nicaragua is based on gender. Nicaragua still possesses a strongly "machista" culture, which affects Nicaraguan women's rights especially in the workplace. Local magistrate Ligia Molina, during a Public Forum on Gender in 2009, commented that while gender-based discrimination has decreased within the last decade, it is still prevalent in Nicaragua. On a national level, local media report that women still struggle for equality in education, equal salaries, and access to competitive job positions within the government and business world. One of the most debilitating effects of machista culture in the development of women's labor equality is the persistent lack of emphasis on education for girls.

¶18. (U) The other principal area of employment discrimination is based upon political affiliation. Labor activists report that more than 11,000 non-unionized public employees were fired in 2009 after rebuffing pressure to join the FSLN party, participate in political marches, and join the FSLN National Union of State Employees (UNE). The leader of the FSLN National Front of Workers (FNT), Gustavo Porras, told the media that he wanted to make the rival Sandinista Central of Workers (CST) "disappear" from state institutions, a sentiment which the FNT has backed up through directing illegal firings of a number of CST union leaders and activists.

¶19. (U) Another case of a pattern of politically-motivated firings carried out by large government entities occurred in February 2009, when the Tax Administration (DGI) fired nearly 400 employees for refusing to join Sandinista Leadership Councils (CLS), government groups dedicated to strengthening the organizational power of the FSLN. The DGI also failed to pay the proper severance as required by law. Though most of these firings have been ruled illegal by the courts, none of the large government entities involved have abided by rulings mandating payment of severance.

Acceptable Conditions of Work

¶20. (U) The national Minimum Wage Law establishes a statutory minimum wage for nine different economic sectors and is set through tripartite negotiations involving business, government, and labor (Ref. D). The National Assembly must approve any wage increases. During 2009 the government increased the minimum wage by an average of 11 percent across all sectors. The monthly minimum wage ranged from 1,573 cordobas (\$76) in the agricultural sector to 3,588 cordobas (\$174) in the financial sector. The highest minimum wage remains significantly below the MITRAB's estimated basic cost of goods for an urban family, which is 8,670 cordobas (\$401). Also, the minimum wage is generally enforced only in the formal sector and is thus only applicable to approximately one-third of the population.

¶21. (U) The standard legal workweek is a maximum of 48 hours, with one day of rest; however, this provision is often ignored by employers who claimed that workers readily volunteer for extra hours for additional pay. While the law mandates premium pay for overtime and prohibits excessive compulsory overtime, these requirements were not always effectively enforced.

¶22. (U) The law establishes occupational health and safety standards, but the government does not allocate adequate staff or resources to enable the Office of Hygiene and Occupational Safety to enforce these provisions. The labor hygiene and security law mandates the creation of regional offices for the National Council of Labor Hygiene and Safety. The council is responsible for worker safety legislation, collaboration with other government agencies and civil society organizations in developing assistance programs, and promoting training and prevention activities. The government does not enforce the new law effectively. MITRAB had conducted 1,096 health and safety inspections in the first half of 2009, the most recent data available. Also, 1,154 workplace accidents were reported in this period, a drop from 5,497 reported in the first half of 2008.

¶23. (U) The law provides workers with the right to remove themselves from dangerous workplace situations without jeopardizing continued employment, but many workers are unaware of this right due to the lack of dissemination of information by the government.

¶24. (U) The point of contact for FTA labor matters at MITRAB is Dr. Jose Malespin, General Secretary. Other key organizations involved in labor rights issues in Nicaragua are the International Labor Organization (ILO), human rights NGOs such as the Permanent Committee on Human Rights (CPDH) and the Nicaraguan Center for Human Rights (CENIDH), and the Labor Committee at the Superior Council of Private Enterprise (COSEP).

¶B. Strategy Recommendations:

Labor Code Reform for Employment Stability

¶25. (U) Labor rights advocates, union leaders and employers have complained that the MITRAB is often inflexible in its interpretation of the existing labor code, often to the detriment of preserving employment. In fact, unions within the FTZs recently signed a tripartite agreement to interpret the labor code in a way that would improve job security while respecting labor rights. Reforms include changing the bi-yearly minimum salary adjustment

process to a single-year review; increasing work-hour flexibility to allow for 4 x 4 shifts popular in assembly plants; and allowing vacation rules to be more flexible for workers and employers.

Labor Courts Reform and Anti-Corruption

¶26. (U) Unions and labor rights advocates all decry the lack of labor justice for Nicaragua's workers. The current case backlog and long conciliation procedures are only part of the problem. Labor advocates believe that a program to reform the courts and conciliation procedures to increase efficiency would improve the situation. Fundamentally, the rampant corruption within the Nicaraguan judicial system need to be addressed before real, sustainable change can occur.

Improve Employer Compliance

¶27. (U) When a company suddenly closes, it often has not set aside sufficient funds to liquidate its workers' claims and pay their severances. The law makes it difficult for workers to get redress, especially when foreign owners are involved. Labor rights advocates recommend reforming the labor laws to require employers to contribute to an "escrow" account that would be released only after all worker liabilities were settled. Alternatively, labor rights advocates recommend reforming labor laws to immediately confiscate equipment of companies that close, and use the proceeds from the sale of equipment to settle workers' claims.

Improving Worker Productivity & Developing National Certification

¶28. (U) Labor rights advocates have repeatedly stressed the need to improve worker productivity through better education and skills development (both professional and personal). They note that most Nicaraguan workers do not complete the 3rd grade, and that they often have not developed the basic work habits (for example, getting to work on time and making arrangements for child care during work hours). They recommend that the GON improve and expand the national system of vocational institutes for students, as well as a national certification process for technical vocations. Nicaragua currently does not have a national certification process for electricians, carpenters, plumbers, mechanics, etc. Such a system would improve consumer confidence, as well as the employability of many workers. The need for specialized skills increases as many unskilled agricultural jobs are being lost to automation.

Labor Education and National Training Institute Reform

¶29. (U) Labor leaders have called for increased labor rights education, including the development of a "labor rights" curriculum that could be included in the public school system and vocational institutes. The labor rights curriculum should include teaching Nicaraguan students their fundamental rights as well as the role of the government in defending those rights.

¶30. (U) Labor leader have also recommended reforming the National Technological Institute (INATEC), a GON entity dedicated to training workers. INATEC is currently controlled by FSLN/FNT leader Damas Vargas and receives 2% of each worker's gross salary; however, the institution is grossly inefficient. INATEC allegedly

spends 66% on administrative costs and has only 33% left to perform its core mission. In addition, INATEC is limited to the Pacific side of Nicaragua. The Atlantic Coast is an area with high unemployment and no real government training programs.

Eliminating Gender Discrimination in the Workplace

¶31. (U) Eliminating gender discrimination from the workplace is a long-term challenge in Nicaragua. On factory floors within the FTZs, most of the employees are women, and almost all of the managers are men. A similar dynamic is also observed in the public sector. This is most likely due to lack of access to higher education for girls, leaving many women in unskilled positions. A public awareness campaign to promote the benefits of girls' education could help slowly transform cultural attitudes that leave women with fewer employment options. Programs to increase awareness of gender discrimination in the workplace are still needed. Another recommendation from women's groups is offering more scholarships for women to attend vocational training programs, entrepreneur workshops, and management certification programs.

Strengthening Labor Unions and Leadership

¶32. (U) The 1996 Labor Reform that changed the rules to allow for unions to organize with only 20 members has had the unintended effect of dividing and conquering organized labor in Nicaragua, which is currently fragmented and weak. Union leaders believe that if this law were repealed, it would immediately strengthen the bargaining power of unions in collective agreements and make it more difficult for employer-created "white" unions to derail the bargaining process.

¶33. (U) Another identified need is providing training programs for union leaders. Often, Nicaraguan union leaders are more concerned with politics than defending workers' interests. Any training that reinforces the purposes of unions and the proper role of union leaders could help strengthen the labor movement in Nicaragua.

Addressing Child Labor

¶34. (U) Existing child labor programs in Nicaragua are not sufficient to eliminate this pervasive problem, and MITRAB lacks the resources (financial and personnel) to effectively inspect and monitor/assess the problem. Experts in the field recommend that eliminating child labor requires changing fundamental public attitudes about it, helping parents to value education for their children over the immediate economic benefits of having them work to support the family. In certain sectors, such as coffee, the approach should be two-fold: (1) a continuous in-country public awareness campaign that is pro-education and against child labor, including a hotline to anonymously report abuses, and (2) an external international campaign to coffee consumers to prefer "child-labor free" coffee.

Improving MITRAB Inspections

¶35. (U) Labor leaders report that MITRAB is arbitrary and ineffective, and often loses sight of the right to work (by maintaining conditions which foster economic growth) as one of the most fundamental of labor rights. Training for MITRAB leaders to

help them effectively carry out the law in an impartial way would potentially improve the institution.

Cohesive, Comprehensive USG Strategy

¶36. (U) There is an assortment of labor programs currently underway in Nicaragua funded by the USG. These programs focus on completely different sectors and regions, each with a unique purpose. Sometimes there is overlap and redundancy between programs. The attached documents summarize ongoing labor programs in Nicaragua operated by the U.S. Agency for International Development (USAID), the U.S. Department of Labor (DOL), and U.S. Department of State's Bureau of Democracy, Human Rights, and Labor (DRL). It is recommended that DOL, DRL and USAID work together to create a comprehensive and cohesive approach to addressing labor issues in Nicaragua going forward.

¶C. Cooperation Needs:

GON-USG Cooperation Challenging

¶37. (U) The return of President Daniel Ortega and the FSLN party to the executive branch has complicated bilateral cooperation, including on labor-related programs funded by the USG. The Ortega government is sharply critical of the United States and cooperation is becoming increasingly difficult for embassy officials even on routine issues. Meanwhile, budget cuts to MITRAB prevent it from pursuing institutional development and reforms without the assistance of outside donors. DOL, DRL or USAID-hired contractors, who bring financial resources and new programs to improve MITRAB, are able to have an amicable relationship with the ministry, while embassy officials are rebuffed or ignored when completing routine program oversight and reporting requirements.

Towards a Cohesive, Comprehensive USG Strategy

¶38. (U) With the hodgepodge of USG-funded labor programs currently underway in Nicaragua, future cooperation with the GON would improve if there was a comprehensive and cohesive strategy for US labor policy. Instead of trying a shotgun approach to solving all of the labor issues in country, we should focus on the top two or three problems where we can make a substantial difference. MITRAB may even engage with the USG about this, under the right circumstances.

Better Work - A Model for Cooperation

¶39. (U) Department of Labor ILAB Deputy Undersecretary Sandra Polaski visited Nicaragua from January 17th to the 19th, exploring the possibility of implementing the ILO's Better Work program here as a pilot project for expanding it to all of the CAFTA-DR countries. Polaski and the ILO representatives were well received by labor unions, private sector representatives, and GON officials. The Better Work program might be an ideal strategy to align business, labor, and government interests in Nicaragua in way that can meaningfully improve both labor conditions and economic competitiveness in Nicaragua's apparel section. Viewed as an ILO program more than a USG one, Better Work may not meet with as much

GON resistance as we have seen in other cooperative programs.

Labor Code Reform for Employment Stability

¶40. (U) DOL labor experts could assist a recent effort led by the ILO to facilitate legislation to reform Nicaragua's labor code to better harmonize the global labor market.

Labor Courts Reform & Anti-Corruption

¶41. (U) USG-funded anti-corruption programs in addition to current labor justice programs may be effective.

Improve Employer Compliance

¶42. (U) DOL could work with MITRAB to help US-owned companies already established in country, and those seeking to do business in Nicaragua, to better understand the labor law and their obligations to workers, should their businesses close.

Improving Worker Productivity & Developing National Certification

¶43. (U) In connection with the Better Work program, DOL/ILO working with MITRAB could develop a series of "telenovelas" TV programs that show how workers demonstrate good work habits with real life situations (for example, getting to work on time and making arrangements for child care during work hours).

¶44. (U) USG funding could help reform INATEC or launch a national system of vocational institutes for students, as well as a national certification process for technical vocations such as electricians, carpenters, plumbers, mechanics, etc.

Labor Education and Reforming National Training Institute

¶45. (U) DOL working with MITRAB and the Ministry of Education could develop a "labor rights" curriculum for the public school system and vocational institutes that teach the fundamental labor rights as well as the role of the government in defending those rights. INATEC could also be revitalized through this USG-funded worker education initiative.

Eliminating Gender Discrimination in the Workplace

¶46. (U) DOL could expand existing programs to increase awareness of gender discrimination in the workplace and explore offer scholarships for women to attend vocational training programs, entrepreneur workshops, and management certification programs under a worker education initiative. In addition, the DOL could work with existing women's rights NGOs to add a labor rights component to their work.

Strengthening Labor Unions & Leadership

¶47. (U) Repealing the 1996 Labor Reforms that weakened unions may be outside the scope of a USG-funded project. However, providing training programs for union leaders that reinforces the purposes of unions and the proper role of union leaders could be appropriately launched.

Addressing Child Labor

¶48. (U) A USG-funded program that promotes education and makes it easier to report child labor abuses thro